

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

JOHN GARRETT SMITH,

No. 3:17-cv-01485-HZ

Pro Se Plaintiff,

ORDER

v.

SANDRA ALDRIDGE,

Defendant.

HERNÁNDEZ, District Judge:

Pro se Plaintiff John Garrett Smith, an inmate at Stafford Creek Corrections Center in Washington, filed this action against Defendant Sandra Aldridge claiming violations of the Racketeer Influenced and Corrupt Organizations Act, the Americans with Disabilities Act, and the Computer Fraud and Abuse Act. This Court previously dismissed Plaintiff's complaint finding that (1) Plaintiff's claims, to the extent they challenged his conviction, were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), and (2) Plaintiff had otherwise failed to state a claim upon which relief could be granted. Opinion & Order, ECF 27. Plaintiff now moves to amend his

complaint¹ and suggests that recent filings in his Washington state court case indicate that his imprisonment was wrongful and mandate his “immediate release.” Pl. Mot., ECF 36. Thus, according to Plaintiff, his claims are no longer barred by *Heck*. As Defendant points out, however, there is no evidence that the Washington courts have set aside his conviction. Def. Resp. 2, ECF 37; Def. Suppl. Resp., ECF 38. In addition, Plaintiff’s motion provides no indication that he is otherwise able to cure the pleading deficiencies identified in the Court’s prior Opinion and Order. *See* ECF 27.

Because Plaintiff still seeks to challenge his conviction through this proceeding, the Court denies Plaintiff’s Motion to Amend. As Plaintiff has not provided any indication that he is capable of otherwise fixing the deficiencies in his Complaint, the Court will enter judgment dismissing this action without prejudice.²

CONCLUSION

The Court DENIES Plaintiff’s Motion of Amendment to Cure Ground for Dismissal and Re-Open Case [36]. This action is dismissed without prejudice. Pending motions are denied as moot.

IT IS SO ORDERED.

Dated this 16 day of Sept, 2018.

MARCO A. HERNÁNDEZ
United States District Judge

¹ The Court previously dismissed the complaint without prejudice and gave Plaintiff leave to amend. ECF 27.

² Defendant urges the Court to dismiss this action without prejudice. The District Court has the “discretion to dismiss complaints with or without prejudice.” *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1058 (9th Cir. 2011) (“District courts have broad discretion in deciding whether to grant leave to amend and whether to dismiss actions with or without prejudice.”). In its discretion and out of an abundance of caution, the Court elects to dismiss this case without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995).